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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DAVID GILBERT SAFFRON
a/k/a DAVID GILBERT and
CIRCLE SOCIETY, CORP.,

Defendants.

Case No. 2:19-cv-1697-JAD-DJA

**PLAINTIFF CFTC'S NOTICE OF
ATTORNEY JOHN GUTKE'S NON-
COMPLIANCE WITH THE COURT'S
ORDER TO PRODUCE DEFENDANTS'
BUSINESS RECORDS BY MARCH 23,
2021**

During the recent March 19, 2021 motions hearing, the Court ordered Defendants' attorney John Gutke ("Gutke") to produce Defendants' records by no later than March 23, 2021 at 3:00 p.m. (Minutes of Proceedings, ECF No. 107). Pursuant to the Court's March 19, 2021 on-the-record order ("Order"), Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") submits this notice of Gutke's failure to comply with the Court's order and requests that the Court order him to immediately produce Defendants' business records and impose appropriate sanctions for his non-compliance.

I. FACTS

The Court has previously ordered Defendants to produce their business records pursuant to the Temporary Restraining Order (ECF No. 9), Preliminary Injunction Order (ECF No. 31),

1 and Civil Contempt Order (ECF No. 51). At the March 19, 2021 motions hearing, the CFTC
2 raised Defendants' ongoing contempt of these orders and Gutke's failure to provide any of
3 Defendants' documents to the CFTC despite his admission of being in possession of "a
4 significant volume" of documents. *See* Email from J. Gutke to CFTC dated Feb. 24, 2021 (ECF
5 No. 101-4 at p. 5) ("I write to advise that my office has recently received a significant volume of
6 documents from Defendants, which we will begin producing on a rolling basis as we complete
7 our review.").

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9 During the March 19, 2021 motions hearing, the Court specifically ordered Gutke on-the-
10 record to produce Defendants' business records to the U.S. Attorney's Office in Las Vegas,
11 Nevada by no later than March 23, 2021 at 3:00 p.m. (ECF No. 107). Indeed, Gutke
12 acknowledged the Court's Order on the record, requested an extra day to comply, and agreed to
13 comply. Following the hearing, the CFTC reminded Gutke of his obligation to comply with the
14 Court's order and provided him with a point-of-contact for delivery of Defendants' records to the
15 U.S. Attorney's Office in Las Vegas, Nevada. *See* Emails between CFTC and J. Gutke dated
16 March 22 and 23, 2021, attached as Exhibit A.

17
18 On March 22, 2021, Gutke filed a motion to withdraw as counsel for Defendants (Motion
19 to Withdraw, ECF No. 108). The Court granted Gutke's motion to withdraw on March 23, 2021
20 at approximately 4:31 PDT (ECF No. 109), which was after the Court's 3:00 p.m. deadline for
21 him to produce Defendants' business records to the U.S. Attorney's Office. The CFTC checked
22 with the U.S. Attorney's Office to see if Gutke had delivered any documents to their office, and
23 the CFTC's contact confirmed that she had not received any documents from Gutke. *See* Email
24 from U.S. Attorney's Office (D. Nev.) to CFTC dated March 24, 2021, attached as Exhibit B.
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II. ARGUMENT

Gutke should not be allowed to use his withdrawal as an excuse to disobey this Court's order and further delay the litigation, default judgment, and effective final relief in the form of restitution to defrauded customers. In his Motion to Withdraw, Gutke fails to address or even acknowledge his obligation to produce Defendants' records. At no time has Gutke sought specific relief from the Court's order for him to personally produce Defendants' business records, which violates Local Rule 11-6(e) ("Except for good cause shown, no withdrawal or substitution will be approved if it will result in delay of discovery, the trial, or any hearing in the case. Where delay would result, *the papers seeking leave of the court for the withdrawal or substitution must request specific relief from the scheduled discovery, trial, or hearing.*") (emphasis added). The Court did not grant Gutke's Motion to Withdraw until after the Court's March 23, 2021 deadline had passed, and his attempt to withdraw in no way relieves him of his obligations. Further, Gutke has failed to provide the CFTC with any information as to the whereabouts of the Bankers Box of Defendants' business records that he is or was holding, and he has failed to indicate whether he still has the records in his possession. Instead, he has chosen to ignore his obligations and use his withdrawal from the case as an apparent excuse for his contempt.

The CFTC made multiple efforts to meet-and-confer with Gutke, urged him to purge his contempt, and attempted to resolve this matter without the Court's intervention, including through email correspondence and scheduling telephone conference calls with him. *See* Emails between CFTC and J. Gutke dated March 22 and 23, 2021, attached as Exhibit A. Gutke missed

1 a schedule conference call with the CFTC on March 25, 2021.¹ *See* Emails between CFTC and
 2 J. Gutke dated March 25, 2021, attached as Exhibit C. Gutke also expressed his view that the
 3 Court’s on-the-record order was not an “actual order” and stated that he is “not in a position to
 4 deliver any documents that belong to Defendants.” *See* Email from J. Gutke to CFTC dated
 5 March 23, 2021, attached as Exhibit A. In light of Gutke’s failure to comply, the CFTC requests
 6 that the Court order him to immediately produce Defendants’ business records and impose
 7 appropriate sanctions against him for his non-compliance.
 8

9 Dated: March 25, 2021

Respectfully submitted,

10 By: /s/ Danielle E. Karst
 11 Danielle E. Karst
 12 Timothy J. Mulreany
 13 **COMMODITY FUTURES TRADING**
 14 **COMMISSION**
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 27 ¹ Gutke claims that he misunderstood the time of the scheduled call with the CFTC. The CFTC then offered to
 28 have another call with him later on the same day and waited on the line, but Gutke failed to participate.

CERTIFICATE OF SERVICE

I certify that on March 25, 2021, I filed a copy of the foregoing *Plaintiff CFTC's Notice of Attorney John Gutke's Non-Compliance with the Court's Order to Produce Defendants' Business Records by March 23, 2021*, with the Clerk of the Court using the CM/ECF system. I also certify that on March 25, 2021, I sent hard copies of the same to Attorney John Gutke and Defendants David Gilbert Saffron and Circle Society, Corp. via the following methods:

John Gutke, Esq.
Gutke Law Group, PLLC
via Electronic Mail to:
jgutke@gutkelaw.com

David Gilbert Saffron
P.O. Box 279
Pomona, CA 91769
via (1) UPS; and (2) Electronic Mail to:
oversight2019@gmail.com

Circle Society, Corp.
c/o David Saffron
2450 St. Rose Parkway, Suite 120
Henderson, NV 89074
via (1) UPS; and (2) Electronic Mail to:
oversight2019@gmail.com

/s/Danielle E. Karst
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